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Local Government Law

by R. Perry Sentell, Jr.*

The year was one of concern and hope, in both private and public affairs. As for the latter, the concern encompassed local government's continuing need for inordinate expenditures of both judicial and legislative attention. The hope was that, at some point, local government would "get it right." This survey graphically illustrates the causes for concern; it also affords glimmers of reason for hope.¹

I. MUNICIPALITIES

A. Officers and Employees

Essential though they be, municipal officers and employees were largely unsuccessful in their appearances before the appellate courts during this survey period. Providing intriguing illustration of this point, City of Baldwin v. Barrett² featured a mayor's actions in both quo warranto³ and mandamus⁴ for his suspension from office by the city

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² Deep appreciation is expressed to the Carl Vinson Institute of Government of the University of Georgia for summer research support which contributed most significantly to the preparation of this survey.

³ For a general "profile" of local government law, those who practice it and the practice itself, based on a survey of Georgia city and county attorneys, canvassing personal backgrounds of local government lawyers, governmental backgrounds, the local government attorney's position, administrative facets of the position, substantive facets of the position, and general assessments of the local government practice, see R. Perry Sentell, Jr., A Profile: The People And The Practice Of Georgia Local Government Law (1995), jointly published by the Georgia Municipal Association and the Association County Commissioners of Georgia, Atlanta.


⁵ For perspective upon the historic writ, and its prominence in local government law, see R. Perry Sentell, Jr., The Writ Of Quo Warranto In Georgia Local Government Law (1987).

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Reversing the trial judge’s issuance of the mandamus, the supreme court reviewed the mayor’s earlier plea bargain “with the district attorney to forego seeking or holding public office in exchange for the dismissal of certain criminal charges and for lenient treatment following his plea of guilty to two felony offenses.” That bargain, the court held, “is a contract under Georgia law which binds both the prosecutor and defendant.” Accordingly, the mayor “was ineligible to run in the 1993 mayoral election,” and possessed “no clear legal right” necessary for mandamus.

Another facet of charged official misconduct surfaced in Sanderson v. State, a municipal police officer’s effort to invoke “certain privileges” not afforded other defendants. In countering a misdemeanor accusation in state court, the officer claimed entitlement to indictment by

4. For perspective upon the historic writ and its overuse in local government law, see R. Perry Sentell, Jr., Miscasting Mandamus in Georgia Local Government Law (1988). On the point of overuse, see another survey period case, Atlanta Indep. Sch. Sys. v. Lane, 266 Ga. 657, 469 S.E.2d 22 (1996). There, the supreme court held invalid an agreement between the city and the city independent school system under which the system received an amount equal to 30% of the city’s local option sales tax receipts. That contract violated the constitution, art. VIII, § VI, para. I(a), prohibiting any school system from receiving funds from any tax source other than ad valorem taxes. Yet, mandamus, the court held, would not lie to compel the system to repay the funds illegally received: “mandamus relief applies prospectively only.” 266 Ga. at 660, 469 S.E.2d at 26. Additionally, the court held, plaintiff taxpayer could not mandamus the city to sue the school system: “Since the City’s suit against the System would probably prove to be ineffectual and, even if the City did prevail, its taxpayers would not benefit, it was not an abuse of discretion to deny (taxpayer’s) mandamus claim against the City.” Id.

5. 265 Ga. at 489, 458 S.E.2d at 619. The council had effected the suspension under a provision of the municipal charter allowing temporary suspension of a mayor under felony indictment. 1986 Ga. Laws 5587.

6. 265 Ga. at 490, 458 S.E.2d at 621. The mayor was indicted in 1991, executed the plea bargain, was sentenced and discharged from probation in 1992, was again elected mayor in 1993, was reindicted on the original charges in 1994, and was then suspended from office by the council. Id.

7. Id. at 490, 458 S.E.2d at 621. “The agreement was sanctioned by the court and incorporated into the sentencing order as a condition of probation.” Id.

8. Id.

9. Id. “Election results cannot cure his ineligibility.” Id. at 490-91, 458 S.E.2d at 621.


11. Id. at 52, 456 S.E.2d at 668. Those privileges reside in O.C.G.A. § 45-11-4, and include the officer’s notification of the charges, presence when evidence against him is presented, and the opportunity to make a sworn statement before the grand jury. Id. For treatment of this statute in the context of local government law, see R. Perry Sentell, Jr., Georgia Local Government Officials and the Grand Jury, 26 Ga. St. B.J. 50 (1989).

12. 217 Ga. App. at 52, 456 S.E.2d at 668. Defendant had been charged by accusation in state court with two counts of simple battery, a misdemeanor. Id. at 51, 456 S.E.2d at 667.
grand jury. The court of appeals rejected the officer’s claim by interpreting the grand jury statute: 13 that measure “says that if a public official is indicted for alleged misconduct, he is entitled to certain rights; it does not say that a public official charged with misconduct must be indicted, or that he is entitled to those rights if he is not.”14

The employment claims in Smith v. City of LaGrange15 went to retirement benefits, specifically the municipality’s alleged mismanagement of early retirement incentive programs.16 Holding plaintiff former employees devoid of standing to raise constitutional challenges,17 the court of appeals focused upon plaintiffs’ argument of “duty.”18 That duty, the court asserted, “would require the City to inform employees of proposals being considered by the city council or proposals that may be presented to the city council in the future.”19 Rejecting plaintiffs’ claim of a “fiduciary relationship,”20 the court noted an absence of evidence that the municipality knew the incentive programs would be forthcoming. “The City’s lack of knowledge of and inability to predict the future conduct of the city council and the mayor precludes plaintiffs’ claim for breach of any duty.”21

13. Id. at 52, 456 S.E.2d at 668. It was necessary, the court found, to “harmonize” that statute with other, later, statutes (O.C.G.A. §§ 17-7-71, 15-7-46), “allowing prosecutors to charge misdemeanors by accusation and to proceed in state court without a grand jury’s indictment . . . .” Those later statutes, the court emphasized, “did not make an exception for charges against public officials.” Id.

14. Id. Thus, the court affirmed the trial judge’s denial of the police officer’s plea in abatement. Id.


16. Id. at 394, 461 S.E.2d at 550. Essentially, plaintiffs complained of the loss of benefits regarding post-retirement health insurance premiums, benefits included in early retirement incentive programs adopted or administered after plaintiffs’ respective retirements. Id.

17. Id. at 395, 461 S.E.2d at 552. One plaintiff had retired prior to the adoption of the first program; the other plaintiffs were timely made aware of the first program and retired prior to the administration of the second program. Thus, “because plaintiffs were not affected adversely by the administration of the incentive programs, they have no standing to make such a challenge.” Id.

18. Id. at 396, 461 S.E.2d at 551. Plaintiffs claimed that the municipality had “breached their employment contracts, breached its fiduciary duty, and committed negligent and fraudulent acts in the administration of its retirement benefit plan.” Id.

19. Id. at 396, 461 S.E.2d at 552.

20. Id. at 396-97, 461 S.E.2d at 552. “Plaintiffs’ attempt to establish such a duty by claiming a fiduciary relationship existed between themselves and the City is not persuasive.” Id.

21. Id. at 396, 461 S.E.2d at 552. Accordingly, the court affirmed the trial judge’s grant of the municipality’s motion for summary judgment. Id.
B. Elections

The election to fill the office of municipal mayor may, on occasion, misfire. In Stuckey v. Storms,22 it resulted in a victory for one of two candidates by a majority of two votes,23 clouded further by the fact that “three ballots were found in the stub box and were not counted.”24 Upon the losing candidate's petition to contest the results, the supreme court noted evidence that “voter confusion was caused by the misleading form of the ballot and compounded by a lack of assistance at the polling place.”25 In those circumstances, plaintiff had established that sufficient legal votes were rejected to place the result in doubt,26 and the court affirmed the trial judge's invalidation of the election.27

C. Recall

The recall procedure is steeped in history; it offers voters a more immediate solution to unsatisfactory government than does the election process itself.28 In effecting that solution, however, the disgruntled voters must toe the prescribed procedural mark; this was the issue of George v. Baker.29 In George, four municipal council members sought to enjoin a recall election, on grounds that the petitions had been filed in less than six months of previous invalid petitions.30 Consequently, plaintiffs maintained, the effort contravened the recall statute's proscription31 that “[i]f the election superintendent finds that a recall petition is insufficient no further application . . . shall be filed for six months after the filing of a valid petition.”

23. Id. at 491, 458 S.E.2d at 344. The mayor's election was a special one. Id.
24. Id. at 492, 458 S.E.2d at 346.
25. Id. The court emphasized the confusing form of the ballot, its violation of the Georgia Municipal Election Code (O.C.G.A. §§ 21-3-187-188), and that the violation “could have caused the ballot to mislead voters to deposit the number strip into the ballot box and the remainder of the ballot into the stub box.” Id.
26. Id. at 493, 458 S.E.2d at 346-47. The court reasoned that the plaintiff need not show that the rejected ballots would have been in her favor, but only were such as to place the results in doubt. Id.
27. Id., 458 S.E.2d at 347. Plaintiff had presented evidence “that the fault therefor is attributable, not to the electors, but to election officials.” Id.
30. Id. at 858, 463 S.E.2d at 124. A trial court had held the previous petitions invalid and, while that decision was on appeal, new recall applications were filed. Id. at 859, 463 S.E.2d at 125.
months. In rejecting plaintiffs' position, the supreme court delineated the statutory proscription from the instance presented: "In this case, because a trial court and not the elections superintendent held that the initial recall petition was invalid, [the proscription] is inapplicable." Accordingly, the contested recall election could proceed.

D. Power

Municipal "power" comes in a wide assortment of contexts, and its issues surface across the substantive spectrum of the law. One highly charged point on that spectrum pits municipal power against the inhibiting confines of estoppel. The face-off is an impressive one, and it recently received instructive emphasis in City of Atlanta v. Black. The case featured a settlement agreement executed by two assistant city attorneys (on behalf of the municipality) with private claimants. The problem arose from the municipal attorneys' violation of an ordinance requiring settlements to first be approved by the municipal council. Urging that the attorneys' actions were nevertheless binding, claimants deemed the municipality estopped to deny the settlement's validity.

32. 265 Ga. at 859, 463 S.E.2d at 125 (quoting O.C.G.A. § 21-4-14(b)).
33. Id. Rejecting an unreasonableness attack upon the distinction, the court focused upon "the longer time frame inherently involved in receiving a judicial finding of insufficiency," as well as the judiciary's broader area of review. "Distinguishing between insufficiency findings by an elections superintendent and by a court is not unreasonable or arbitrary." Id.
34. For perspective, see R. Perry Sentell, Jr., The Doctrine of Estoppel in Georgia Local Government Law (1985).
36. Id. at 425, 475 S.E.2d at 552. The agreement provided for a monetary payment to claimants. Id. at 428, 457 S.E.2d at 553.
37. Id. at 425, 457 S.E.2d at 552. The assistant city attorneys possessed no such authority and the municipal council refused to adopt the agreement. Id.
38. Id. at 428, 457 S.E.2d at 553. The case came to the supreme court from the Eleventh Circuit via the following certified question: "Does an express restriction on a City attorney's right to settle a cause of action embodied in a municipal ordinance, which is not specifically communicated by the City or its attorney to an opposing party, circumscribe the City attorney's apparent authority to bind his client to a settlement agreement?" Id. at 425, 457 S.E.2d at 552.
The supreme court sketched both the statutory\(^{39}\) and judicial\(^{40}\) history of public estoppel, concluding that "the authority of public sector attorneys, as with all other public officers, must be deemed limited by the laws that define and prescribe their authority."\(^{41}\) It is the duty of persons dealing with public attorneys, the court declared, to determine their compliance with those limitations.\(^{42}\) In this case, claimants took no "reasonable steps" to ascertain the attorneys' settlement authority, and the attorneys made no representations that they had obtained the authority.\(^{43}\) Accordingly, the court concluded, the municipality was not estopped to deny the validity of the settlement.\(^{44}\)

A settlement agreement, but in a distinctly contrasting context, likewise constituted the focal point of *Hamsley v. City of Unadilla*.\(^{45}\) There, upon taxpayer protest of its purchase of property, the city sold one of the parcels for the outstanding principal amount and conveyed cash and the second parcel to the financing bank.\(^{46}\) Affirming the trial judge's approval of this agreement, the supreme court found considerable municipal discretion in exercising a legally delegated power.\(^{47}\) Holding

\(^{39}\) *Id.* at 426, 457 S.E.2d at 552. "Powers of all public officers are defined by law and all persons must take notice thereof. The public may not be estopped by the acts of any officer done in the exercise of an unconferred power." *Id.* (citing O.C.G.A. § 45-6-5).

\(^{40}\) City of Summerville v. Georgia Power Co., 205 Ga. 843, 55 S.E.2d 540 (1949): "The doctrine of estoppel is not applied as freely against a municipal corporation as against an individual." *Id.* at 845-46, 55 S.E.2d at 543 (citing City of Jefferson v. Holder, 195 Ga. 346, 355, 24 S.E.2d 187, 192 (1943)).

\(^{41}\) 265 Ga. at 428, 457 S.E.2d at 553.

\(^{42}\) *Id.* at 426, 457 S.E.2d at 552. "Furthermore, plaintiffs were under a duty to determine that the Council had preapproved the settlement terms as to monetary amounts in excess of $500." *Id.* at 428, 457 S.E.2d at 553.

\(^{43}\) *Id.*, 457 S.E.2d at 554.

\(^{44}\) *Id.* at 429, 457 S.E.2d at 554. "[W]e hold that a public sector attorney's authority, like that of any other public officer, is defined and prescribed by law, including municipal ordinances such as the municipal ordinance in issue in this case." *Id.*

Justice Carley, joined by Justice Thompson, dissented on grounds that the public estoppel statute was inapplicable: "In my opinion, the 'powers' and 'acts' of an attorney engaged in representing a governmental entity in a legal proceeding are in no way equivalent to the 'powers' and 'acts' of a 'public officer' as that term is employed in O.C.G.A. § 45-6-5." 265 Ga. at 430, 457 S.E.2d at 555 (Carley, J., dissenting). Accordingly, the claimants were owed a specific communication of any limitations upon the attorneys' authority to settle on behalf of the municipality. *Id.*


\(^{46}\) *Id.* at 494, 458 S.E.2d at 627. Upon the taxpayer protest, the bank intervened to enforce payment, thus yielding the consent agreement between the municipality and the bank at issue in the case. *Id.*

\(^{47}\) For exposition of that precept, see R. Perry Sentell, Jr., *Discretion in Georgia Local Government Law*, 8 GA. L. REV. 614 (1974). "This rule means that courts do not inquire into the economy or wisdom of a city's discretionary act when the city council has authority
that discretion to control, the court reasoned that "[t]he settlement agreement resolved a genuine dispute that the city had the possibility of losing, obligated the city to pay less money than the bank demanded, and avoided the payment of attorney's fees to further defend against the bank's claim."49

The municipal power exercise failed the court of appeals' review in Grove v. Sugar Hill Investment Associates.50 There, plaintiffs attacked the validity of a municipal resolution approving a "restated lease and operating agreement" with the city's solid waste treatment provider.51 Appraising the document, the court focused upon a provision designating specified additional parcels to be included within the landfill at the option of the provider.52 The court deemed that provision a "siting decision" which, under the Solid Waste Management Act, must be preceded by notice.53 Rejecting defendants' proposal that the defect be cured by a properly noticed meeting,54 the court reasoned that "[a] public airing must precede a decision if it is to have an unbiased, unencumbered effect on the decision."55 The resolution's siting decision, the court concluded, was void.56

48. 265 Ga. at 494, 458 S.E.2d at 628. The court found the legally delegated power in O.C.G.A. § 36-30-2, empowering municipalities to manage and dispose of their property. 265 Ga. at 494, 458 S.E.2d at 627.
49. 265 Ga. at 494, 458 S.E.2d at 628. "Given the city's potential liability, we reject the taxpayers' argument that the illegality of the underlying notes means the city abused its discretion in paying the claim." Id.
51. Id. at 782, 466 S.E.2d at 903.
52. Id. "It constitutes mutual obligations designating specified additional parcels for landfilling, to be added at the option of Mid-American alone, subject to permitting and other applicable laws for landfills." Id. at 783-84, 466 S.E.2d at 904.
53. Id. at 782, 466 S.E.2d at 903. "We reject [defendants'] argument that, because the new property is contiguous to the existing landfill, the adoption of the agreement is not a siting decision." Id. at 784, 466 S.E.2d at 904-05.
55. Id. § 12-8-26(b).
56. 219 Ga. App. at 785, 466 S.E.2d at 905. "The implicit purpose of the notice requirements is to promote reasoned decisions on the location of waste facilities made after public discussion and to assure officials' accountability." Id.
57. Id. at 785, 466 S.E.2d at 905-06. "The score must be the result of plays made during the game, not after its conclusion." Id., 466 S.E.2d at 906.
58. Id. at 786, 466 S.E.2d at 908. Observing, however, the presence of a severability clause in the lease agreement, the court held other provisions ("many matters unrelated to the illegal siting decision such as pre-existing leases, per ton host fees for solid waste, recovery of methane gas, and indemnification") valid. Id.
E. Regulation

The adult entertainment establishment continued its levy upon municipal regulatory attention during the survey period. 69 Club Southern Burlesque, Inc. v. City of Carrollton 69 featured a constitutional attack upon an ordinance regulating such establishments. Specifically, challenger argued, the municipality produced insufficient evidence of "pernicious secondary effects" to justify the ordinance. 61 Rejecting that argument, the supreme court noted plaintiff's agreement at the bench trial to treat municipal responses to inquiries as sworn testimony. In those responses, the city had identified several studies from other localities supporting its conclusion on secondary effects. 62 The court held this unrebutted evidence 63 sufficient to authorize the trial judge's finding "that the City relied on specific studies which it reasonably believed to be relevant to the problems addressed by the ordinance." 64

The court likewise sustained the ordinance at issue in Dudley's Food & Spirits, Inc. v. City of College Park, 65 an ordinance prohibiting "full or substantial nudity in establishments where alcoholic beverages are served." 66 Reviewing the familiar three-part test for constitutional- ity, 67 the court enumerated the items of evidence offered by the

60. 265 Ga. 528, 457 S.E.2d 816 (1995).
61. Id. at 529, 457 S.E.2d at 818.
62. Id. at 530, 457 S.E.2d at 818. "This evidence offered by the City was not rebutted by appellant at the bench trial. In fact, appellant put forth no evidence whatsoever." Id. at 529-30, 457 S.E.2d at 818.
63. Id. at 531, 457 S.E.2d at 819. "Here, . . . the City did produce evidence of the specific studies that it had relied upon and evidence of its reasonable belief in the relevance thereof." Id. at 530, 457 S.E.2d at 818.
64. Id. at 531, 457 S.E.2d at 819. Justice Sears, joined by Chief Justice Hunt, dissented on grounds that the municipality had merely listed reports from other cities and had failed to demonstrate that it relied upon those reports in adopting the ordinance. Id. at 534, 457 S.E.2d at 821 (Sears, J., dissenting).
66. Id. at 618, 458 S.E.2d at 824.
67. Id. "The ordinance must (1) further an important government interest, (2) be unrelated to the suppression of speech, and (3) restrict speech no more than necessary to further the government interest." Id. at 619, 458 S.E.2d at 824.
municipality. As for studies demonstrating pernicious secondary effects, "[i]t was not incumbent upon the city to prove the efficacy of the studies," only that it studied them and reasonably believed them relevant. As for evidence that the city's motivating factor was not the suppression of speech, "it is clear that the crime issue was on the minds of the council members from the outset, and that it was the motivating factor in enacting the ordinance."

F. Openness

The mandate of public disclosure goes to both public records and public meetings. As for the former, the Open Record Act's exemptions are as traditional as its disclosure requirements. One established exemption addresses law enforcement and prosecution records; it touches upon both "confidential information" and matters part of a "pending investigation or prosecution." In Atlanta Journal & Constitution v. City of Brunswick, the supreme court applied the "confidential information" exemption to certain police department incident reports. The court found that the trial judge had committed no reversible error in conducting an ex parte hearing to determine which information might disclose a confidential source or reveal investigative matter endangering human life.

68. Id. at 619, 458 S.E.2d at 824-25. [T]he city submitted the ordinance; the minutes of the city council meeting at which the need for such an ordinance was discussed; an Austin, Texas, study showing a correlation between adult entertainment establishments and crime; and statistics from an Atlanta study of criminal activity in four areas in which adult business establishments are located.

69. Id. at 620, 458 S.E.2d at 825.

70. Id.

71. Id. The court reviewed the minutes of the council meeting to show that the Austin study was distributed and that the municipal police chief spoke at length about the crime factor. Id.


74. Id. § 50-18-72(a)(3).

75. Id. § 50-18-72(a)(4).


77. Id. at 413-14, 457 S.E.2d at 176. "We granted the petitions for certiorari to determine the extent to which records, which are otherwise non-exempt from disclosure under the provisions of O.C.G.A. § 50-18-72(a)(4), are exempted from disclosure under the provisions of O.C.G.A. § 50-18-72(a)(3)." 265 Ga. at 413, 457 S.E.2d at 177.

78. 265 Ga. at 414-15, 457 S.E.2d at 178. "It follows that the Court of Appeals [214 Ga. App. 150, 447 S.E.2d 41 (1994)] correctly affirmed the trial court's ruling that the incident
G. Liability

In litigation over municipal tort liability, the basic elements of tort law occasionally get lost in the shuffle. One of those elements is that of "duty," the absence of which brought claimant to regret in Tilley v. City of Hapeville. The case featured a motorist's action against a municipality and its police officer for injuries suffered when plaintiff collided with a car parked on the highway at night. Rejecting plaintiff's claims, the court of appeals emphasized that defendants had not explicitly assured plaintiff that they would act on his behalf nor had plaintiff detrimentally relied upon defendants' affirmative actions. Thus, no special relationship existed between the parties, the court held, and defendants otherwise owed no "duty" to protect individual citizens.

Another liability essential goes to plaintiff's conduct in the case, a point forcefully highlighted in City of Winder v. Girone. There, the supreme court denied a tort action to a homeowner who fell while

reports are exempted from disclosure to the extent they contain the type of confidential information specified in subsection (a)(3) of O.C.G.A. § 50-18-72." 265 Ga. at 414-15, 457 S.E.2d at 178.


80. Id. at 40, 459 S.E.2d at 567, cert. granted.

81. Id. at 40, 459 S.E.2d at 568. Plaintiff was traveling from the municipal airport during early morning hours, collided with a vehicle parked in the travel lane without lights, and sued defendants for negligence in failing to warn or direct him away from the hazard. Id.

82. Id. at 41, 459 S.E.2d at 568. These are the elements for determining "whether a duty exists upon which a police officer or municipality may be held liable for failure to provide police protection to an individual citizen." Id. at 40, 459 S.E.2d at 568.

83. Id. at 41, 459 S.E.2d at 569. The court affirmed the trial judge's grant of defendants' motion for summary judgment. Id. at 42, 459 S.E.2d at 569.

The absence of a tort duty also controlled the court of appeals' decision in the period case of Finley v. Lehman, 218 Ga. App. 789, 463 S.E.2d 709 (1995). This wrongful death action was against a municipal engineer, present at a work site as a courtesy to see that sewer line was being laid to municipal specifications, when an improperly shored ditch collapsed on plaintiff's decedent. The court emphasized that the defendant had not actually undertaken to make safety inspections of the ditch, nor had the municipality explicitly assured that it would act on behalf of the decedent. "A private citizen does not have a cause of action for breach of such a duty by a governmental employee in the absence of a special relationship between the citizen and the governmental unit." Id. at 791, 463 S.E.2d at 710-11.

directing cleanup operations necessitated by raw sewage spills onto her property from the municipal sewer line. The court observed that "the presence of the sewage and the slippery condition it presented were known by [plaintiff] and she was not required to traverse the concrete patio to get the cleaning crew to the basement." Accordingly, the court held, the plaintiff's own conduct barred her recovery.

As for municipal tort immunity, the action to recover for a municipal "nuisance" offers a possible exception. As evidenced by Hibbs v. City of Riverdale, however, the nuisance action carries its own baggage. Plaintiffs in Hibbs had experienced repeated flooding of their homes; they alleged municipal negligence in approving a faulty drainage system and the maintenance of a resulting nuisance. Turning a deaf ear to the nuisance allegations, the court of appeals emphasized the requirement of more than mere negligence. "[Even] assuming the City accepted the drainage system and was therefore responsible for its

85. Id. at 723, 462 S.E.2d at 704. Plaintiff alleged municipal negligence in failing to maintain the sewer line. Id., 462 S.E.2d at 705.
86. Id. at 724-25, 462 S.E.2d at 706. Reversing the court of appeals' decision in the case Girone v. City of Winder, 215 Ga. App. 822, 452 S.E.2d 794 (1994), the supreme court reasoned as follows: "A property owner who comes upon a dangerous situation created by a trespasser on the property owner's property has the same duty to exercise due care for her personal safety as does a stranger who comes upon a dangerous situation created by another." 265 Ga. at 724, 462 S.E.2d at 705-06.
87. 265 Ga. at 725, 462 S.E.2d at 706. The court thus affirmed the trial judge's grant of summary judgment for the municipality, holding that there was no jury issue in the case. Id.
90. Id. at 457, 465 S.E.2d at 486. Plaintiffs' homes were located in a subdivision, constructed by a developer who allegedly complied with municipal subdivision regulations. Id.
91. Id. at 459, 465 S.E.2d at 489. The court affirmed the trial judge's grant of the municipality's motion for summary judgment. Id.
maintenance, the crux of the plaintiffs' complaints is negligence, 'and negligence is insufficient to support a cause of action for nuisance.'

Watson v. City of Atlanta illustrated yet another effort to by-pass municipal tort immunity—the "inverse condemnation" exception. Plaintiffs complained that their apartments near the municipal airport were not treated the same as single-family dwellings there. Unlike the latter, plaintiffs' properties were excluded from municipal purchase under the city's "Noise Compatibility Program." Alleging loss of property values, plaintiffs sued in inverse condemnation for municipal actions violative of equal protection. Reviewing the city Program's stated goal of reducing land uses incompatible with airport noise, the court pronounced the Program's classifications flawed. "The defect in the classification is that it draws a line between otherwise identical groups—residences in the vicinity of the airport—without an objective basis for doing so." The court remanded the case for a new trial on the absence of a rational relationship between goal and classification.

92. Id. at 458, 465 S.E.2d at 489 (quoting City of Lawrenceville v. Macko, 211 Ga. App. 312, 316(3), 439 S.E.2d 95 (1993)).

See also the period case of City of College Park v. Pichon, 217 Ga. App. 53, 456 S.E.2d 686 (1995), in which plaintiff was successful in recovering a jury verdict for municipal nuisance in maintaining a drainage easement, but suffered reversal on the issues of attorney fees and litigation expenses. The court held that plaintiff's testimony alone, as to the approximate costs of his legal fees, was an insufficient basis for the awards. Id. at 56.


95. 219 Ga. App. at 705, 466 S.E.2d at 231. The municipal "Program" set forth the conclusion that multi-family units were less affected by and thus more compatible with the noise generated by the airport. Id.

96. Id. Plaintiffs alleged that once the municipality purchased and razed the single-family units, their apartments were left in a "wasteland" with even more noise. "As a result, plaintiffs contend they have been forced to lower rental rates, have experienced lower occupancy in the units, and have been unable to sell the property." Id.

97. Id. at 706, 466 S.E.2d at 232. "The City provides no competent evidence in the form of verifiable apartment occupancy rates or verifiable statistics to prove that single-family home owners are more affected by the noise than are multi-family renters." Id.

98. Id.

99. Id. at 707, 466 S.E.2d at 232. "Accordingly, the trial court erred in finding that the classification bore a rational relationship to the goal of reducing noncompatible land use by buying those properties most affected and in granting the City summary judgment on plaintiffs' equal protection claim." Id.
Municipal officers and agents likewise attracted litigation during the survey period. In *Gaskins v. Hand*, plaintiff sued the mayor for ordering that municipal sanitation workers could no longer take their breaks at plaintiff's store. On both counts of plaintiff's complaint, the court of appeals reversed adverse summary judgments. As for tortious interference with business relations, the court found questions of fact to exist on each element of the tort. As for statutory personal liability, the court held that "questions exist as to whether [the mayor] was acting within his authority or with malicious intent when he ordered the ban on the store." Claimant enjoyed less success in *Davis v. Dublin City Board of Education*, an action against both school board and principal for injuries to plaintiff who tripped on a rug and fell through a glass door. Classifying the maintenance of facilities as discretionary in nature, the court held the board entitled to sovereign immunity and the principal covered by official immunity. Moreover, the court asserted, neither of those immunities was waived by the admitted existence of liability insurance.

101. *Id.* at 824, 466 S.E.2d at 689. The order arose from an original controversy over the city's switching to a private sanitation service and a threat by the son of the store owner to sue the municipality. *Id.*
104. 219 Ga. App. at 825, 466 S.E.2d at 690.
106. *Id.* at 122, 464 S.E.2d at 252-53. The court relied upon the 1991 Amendment to the Constitution, art. I, § II, para. IX. "It follows that the Board of Education is entitled to claim sovereign immunity and the principal is entitled to official immunity from personal liability for injuries sustained as a result of the negligent performance of discretionary official acts." 219 Ga. App. at 122, 464 S.E.2d at 252-53.
107. 219 Ga. App. at 123, 464 S.E.2d at 253. The court reasoned that no statute waived sovereign immunity, in the fashion contemplated by the 1991 constitutional amendment, for school districts that purchase liability insurance. *Id.*
H. Zoning

Matters of both rezoning and variances are staples in the law of municipal zoning. The issue in Powell v. City of Snellville108 went to the former: "The question is whether . . . the property owner . . . had to file an application for rezoning with local authorities before seeking a judicial determination of the constitutionality of the property's zoning."109 Answering that question in the negative, the supreme court emphasized that the municipality had twice rezoned plaintiff's property over her protests, once with knowledge of pending litigation, and had purposely restricted plaintiff from using the property as she desired.110 To require plaintiff to go yet again before the municipality, prior to attacking the zoning classification, would, said the court, "require a useless act."111

The variance controversy emerged in Union City Board of Zoning Appeals v. Justice Outdoor Displays, Inc.,112 involving outdoor advertising signs. Suffering denial of a variance for those signs, plaintiff challenged the constitutionality of the municipal sign ordinance.113 In a lengthy opinion, the supreme court delineated the invalid portions of the ordinance. First, the court invalidated a prohibition upon the display of noncommercial messages at locations where commercial messages were permitted.114 Second, the court rejected "content restrictions" on on-premise signs in residential districts, "namely the

109. Id. at 315, 467 S.E.2d at 541.
110. Id. at 315-16, 467 S.E.2d at 541. Plaintiff owned an eleven acre tract of land which she planned to sell for development as a parking facility for a shopping mall. The municipality had twice rezoned the property over plaintiff's protests, both times imposing a condition preventing use as a parking lot for the mall. Id.
111. Id. at 316, 467 S.E.2d at 542.
Even when there is a remedy provided by law, a court in equity will not require pursuit of the remedy if to do so would be a futile act . . . . Here it is plain that it would have been in vain for [plaintiff] to first seek an application for the rezoning she sought. Id. The court thus reversed the trial judge's summary judgment favoring the municipality. Id. at 317, 467 S.E.2d at 542.
113. Id. at 393, 467 S.E.2d at 877. The court affirmed the trial judge's decision affirming the zoning board's denial of a variance, but also reviewed other determinations on constitutionality. Id.
114. Id. at 394-95, 467 S.E.2d at 878. Illustrating the defect, the court reasoned that under the prohibition "the proprietor of a dining establishment could erect a sign identifying 'Joe's Famous Pizza,' but could not post a sign, identical in size, color, lettering, structure, and placement, proclaiming his view that 'abortion is murder.'" Id. at 396, 467 S.E.2d at 879.
expression of the personal views of a resident on subjects unrelated to the residential lot on which the sign is located." 115 Third, the court voided a seven-week time limitation on political signs; that "durational limitation placed on political signs does not withstand strict scrutiny, and therefore constitutes an unconstitutional restraint on free speech." 116 Finally, the court declared "unconstitutionally overbroad and vague" a restriction on signs containing "statements, words or pictures of an obscene, indecent or immoral character such as will offend public morals." 117

II. COUNTIES

A. Officers and Employees

In local government officialdom, the writ of quo warranto serves as the law's most prominent procedure for trying title to office. "It is no mere coincidence that for well over seven hundred years, the common law has characterized quo warranto as an 'extraordinary remedy.'" 118 This survey period featured the procedure in the context of Brown v. Scott, 119 an effort to apply the writ 120 to juvenile court "intake officers." 121 These officers, also county police officers, disclaimed their status as "public officers" subject to the writ; their argument received short shrift from the supreme court. The court asserted that the intake officer "has a title given by law and exercises functions concerning the public assigned by law"; 122 "[t]he mere fact that he or she may not be entitled to all the trappings of public office does not make the office any less public." 123 Proceeding to subject the office to the writ, the court promptly discovered a violation of separation of powers. 124 "They

115. Id. at 399, 467 S.E.2d at 881.
116. Id. at 401, 467 S.E.2d at 882.
117. Id., 467 S.E.2d at 883. The court said this language "requires the speaker to step outside of his or her own moral consciousness and independently determine the moral sensibilities of the general public." Id. at 402, 467 S.E.2d at 883.
120. O.C.G.A. § 9-6-60 (1993).
121. 266 Ga. at 45, 464 S.E.2d at 608. "A juvenile intake officer is appointed by the judge of the juvenile court to determine whether a child who has been taken into custody should be released or retained. O.C.G.A. § 15-11-19." 266 Ga. at 45, 464 S.E.2d at 608.
122. 266 Ga. at 45, 464 S.E.2d at 608. "This conclusion is not altered simply because the officer's duties are narrowly confined." Id.
123. Id. (citing McDuffie v. Perkerson, 178 Ga. 230, 233(3), 173 S.E. 151 (1933)).
cannot assume and discharge the duties of law enforcement officers, an executive function, and at the same time undertake the duties of juvenile intake officers, a judicial function.\footnote{126}

Yet another frequently pursued "writ" in county law, although often without success, is that of mandamus.\footnote{126} At least three cases in the supreme court this year illustrated the point. A prerequisite for mandamus, declared missing in \textit{Thompson v. Paulk},\footnote{127} is the unavailability of a legal remedy. While the court recognized that a county jail detainee was entitled to records of his mental health treatment,\footnote{128} it held petitioner deficient in failing to avail himself of the sheriff's established procedures.\footnote{129}

Additionally, a mandamus petitioner must demonstrate a clear legal right to the relief sought.\footnote{131} This snare operated to foreclose petitioner's action in \textit{Brooks v. Clayton County Board of Commissioners},\footnote{132} a court reporter's effort to force payment of alleged travel and contingent expenses.\footnote{133} A similar disposition befell a county jail inmate in \textit{Grant} at 46-47, 464 S.E.2d at 609. The court thus affirmed the trial judge's issuance of quo warranto. \textit{Id.} at 46-47, 464 S.E.2d at 609.

\textit{Id.}\footnote{127} at 479, 457 S.E.2d at 665 (1995). "Mandamus is available only when the petitioner

\textit{Id.} at 479, 457 S.E.2d at 665. "Mandamus is available only when the petitioner lacks an adequate legal remedy." \textit{Id.}\footnote{127}

\textit{Id.} at 479, 457 S.E.2d at 665. "Mandamus is available only when the petitioner lacks an adequate legal remedy." \textit{Id.}\footnote{127}

\textit{Id.}\footnote{129} at 479, 457 S.E.2d at 665. The court thus affirmed the trial judge's grant of summary judgment to the sheriff. \textit{Id.} at 480, 457 S.E.2d at 665.


\textit{Id.}\footnote{132} at 482, 458 S.E.2d at 355 (1995).

\textit{Id.} at 482, 458 S.E.2d at 355. The trial court had found that petitioner "had not shown a clear legal right to the relief she sought from the Board," and the supreme court affirmed denial of her petition. \textit{Id.}\footnote{133}
v. Byrd\textsuperscript{134} who desired corrected documents from the Superior Court Clerk indicating petitioner's incarceration time.\textsuperscript{135}

In Murray County School District v. Adams,\textsuperscript{136} the court of appeals considered a challenge by county school employees to the school board's terminating the employer matching portion of an annuity retirement savings plan.\textsuperscript{137} Delineating the item for analysis, the court focused upon the "Retirement Savings Plan," not the "Plan Design" attached to the board's minutes,\textsuperscript{138} as the controlling document. Under that document, the employer possessed authority to "terminate the Plan at any time."\textsuperscript{139} Accordingly, the court held, the employees "never acquired a property right in the benefits,"\textsuperscript{140} and the employer was free to terminate.\textsuperscript{141}

B. Power

Whether a county possesses a given power frequently turns upon an analysis of the "state v. local government" hierarchy. The survey period presented an apt illustration of that analysis in DeKalb County Board of Health v. Lee.\textsuperscript{142} There, the issue posed went to whether the county...
could establish qualifications for persons who install and repair septic tanks.\textsuperscript{143} That issue depended, in turn, upon whether such work fell within the state statute's definition of "plumbing"\textsuperscript{144} so as to preempt county power.\textsuperscript{145} Responding in the negative, the supreme court construed the statute to cover "work on piping fixtures and other materials from a residence to the septic tank."\textsuperscript{146} However, this did not include "installing, maintaining, or repairing the septic tank itself."\textsuperscript{147} Accordingly, the court decided, state law did not preempt county power to regulate the work.\textsuperscript{148}

A variation on the hierarchy theme surfaced in the face-off featured by Floyd County Grand Jury v. Department of Family & Children Services.\textsuperscript{149} The case involved the county grand jury's power to subpoena county Department of Family and Children Services ("DFACS") employees as a part of the former's authority to conduct civil inspections and investigations of county offices.\textsuperscript{150} In reviewing the issue, the court of appeals examined the statute empowering grand jury investigations\textsuperscript{151} and statutes dealing particularly with DFACS.\textsuperscript{152} On the basis of that examination,\textsuperscript{153} the court concluded that county departments of family and children services "are state rather than county offices,"\textsuperscript{154} and "not subject to the grand jury's power of inspection and investigation."\textsuperscript{155}

\begin{itemize}
\item \textsuperscript{143} Id. at 507, 467 S.E.2d at 565. The trial court had enjoined the county from enforcing its requirements. \textit{Id}.
\item \textsuperscript{144} O.C.G.A. § 43-14-2(12) (1994).
\item \textsuperscript{145} 266 Ga. at 507, 467 S.E.2d at 565. "Unless the installation and repair of septic tanks are included in the statutory definition of plumbing, counties may establish the qualifications of persons who do that work." \textit{Id}.
\item \textsuperscript{146} Id. at 508, 467 S.E.2d at 566.
\item \textsuperscript{147} Id.
\item \textsuperscript{148} Id. The court thus reversed the trial court's actions in the case. \textit{Id}.
\item \textsuperscript{149} 218 Ga. App. 832, 463 S.E.2d 519 (1995).
\item \textsuperscript{150} Id. at 833, 463 S.E.2d at 520 (citing O.C.G.A. § 15-12-71(b)(2) (1994)).
\item \textsuperscript{151} Id. "[T]he grand jury shall, whenever deemed necessary by eight or more of its members, appoint a committee of its members to inspect or investigate any county office . . . ." \textit{Id}.
\item \textsuperscript{152} \textit{E.g.}, O.C.G.A. §§ 49-2-1 to 49-4-17 (1994). "Not only are county departments of family and children services under the supervision of DHR, a state agency, but Georgia law suggests that DFACS employees are state employees." 218 Ga. App. at 833, 463 S.E.2d at 521.
\item \textsuperscript{153} 218 Ga. App. at 834, 463 S.E.2d at 521. As for annual county contributions to the DFACS program, the court observed that no county is required to participate in the cost of such programs and "therefore, any contribution by [the county] to DFACS is voluntary." \textit{Id}.
\item \textsuperscript{154} \textit{Id}.
\item \textsuperscript{155} Id. at 835, 463 S.E.2d at 521. "Consequently, the trial court properly quashed the subpoenas." \textit{Id}.
\end{itemize}
C. Regulation

As with municipalities, the control of adult entertainment establishments likewise consumed county regulatory efforts during the survey period. In reviewing those efforts, the supreme court cut a distinctive analytical path. *Parker v. Whitfield County*\(^ {156} \) encompassed attacks against an ordinance which licensed adult establishments and created a "buffer" between nude dancers and patrons.\(^ {157} \) Rejecting the challenges, the court held that the county need not prove the efficacy of studies it relied upon from other communities; it need only show reliance upon specific evidence of pernicious secondary effects reasonably believed relevant.\(^ {158} \) As for the "buffer" provisions,\(^ {159} \) the court asserted that "[a]n ordinance can pass constitutional muster even though it has a somewhat negative impact on protected expression."\(^ {160} \) This measure, the court found, furthered the governmental interests in reducing crime and neighborhood deterioration.\(^ {161} \) Finally, the court viewed the ordinance's licensing standards as "clear and appropriate,"\(^ {162} \) they did not "vest the decisionmaker with unfettered discretion."\(^ {163} \)

Subsequent to sustaining the county's defensive posture in *Parker*, the court assessed a government's offensive burden in regulating adult establishments. *Chambers v. Peach County*\(^ {164} \) featured the county's attempted enforcement of its nude dancing ordinance, with defendant raising constitutional objections.\(^ {165} \) The supreme court's initial


\(^{157}\) *Id.* at 829, 463 S.E.2d at 116. Plaintiff owned a nude dancing establishment; he argued that the county's evidence of increased criminal activity and deterioration of neighborhoods was insufficient to justify the ordinance. *Id.* at 829, 463 S.E.2d at 117.

\(^{158}\) *Id.* at 829-30, 463 S.E.2d at 117. "The evidence offered by the county satisfied that burden." *Id.* at 830, 463 S.E.2d at 117.

\(^{159}\) E.g., a stage of minimum height, minimum distance requirements, full lighting of the premises, and prohibition of the sale of alcoholic beverages. *Id.*

\(^{160}\) *Id.*

\(^{161}\) *Id.* Here, said the court, "the incidental restriction of speech is no greater than necessary to further the government interests." *Id.*

\(^{162}\) *Id.* at 831, 463 S.E.2d at 118.

\(^{163}\) *Id.* Thus, the court affirmed the trial judge's denial of plaintiff's challenge. *Id.*


\(^{165}\) *Id.* at 318, 467 S.E.2d at 519. The county sought to permanently enjoin the operation of defendant's establishment, and the trial judge granted the county's motion for summary judgment. In review, the supreme court noted that "[a]s movant for summary judgment, [the county] has the burden of showing that no genuine issue of material fact remained concerning the ordinance's purpose as an effort to deal with adverse secondary effects." *Id.* at 519-20, 467 S.E.2d at 522.
focus went to "the county's effort to establish that its ordinance was passed to combat the undesirable secondary effects of sexually explicit businesses." Immediately, the court encountered a problem: the ordinance included only a statement of "purpose"; it did "not state that it is relying on the experience of other governing bodies in enacting this ordinance." As for the commission chairman's affidavit including copies of other governmental studies, that evidence "misses the mark." In the absence of a showing that "before passing the ordinance," the county relied upon such studies, "the ordinance regulating expressive conduct cannot pass constitutional muster." Accordingly, the court reversed the trial judge's decision of validity.

D. Openness

The survey period's issue of county "openness" went to the matter of "open records," more specifically to the issue of charges imposed by county custodians for providing those records. That issue arose in Powell v. VonCanon, the demand by a seller of compiled real estate records that county record custodians give him the necessary copies.

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166. Id. at 320, 467 S.E.2d at 522. "Thus, before the ordinance is put to the Paramount Pictures three-pronged test reserved for content-neutral legislation, it must be established that the ordinance is designed to combat the undesirable secondary effects of sexually explicit businesses." Id.
167. Id.
168. Id. at 321, 467 S.E.2d at 522.
169. Id. at 321, 467 S.E.2d at 523. This affidavit had been attached to the county's motion for summary judgment, with the chairman stating that the commission had "relied on legal advice and intended to enact a constitutionally valid ordinance, and concluded from his review of the accompanying studies of secondary effects that the studies were consistent with the purpose and goal of [the county] ordinance." Id.
170. Id.
171. Id.
172. Id. "Consequently, the trial court erred when it found the ordinance constitutional and authorized the county to enforce it against appellant." Id.
175. Id. at 840, 467 S.E.2d at 193. Plaintiff was in the business of compiling public real estate records and then selling that information via a computer network. He brought this action for records against a county commissioner, the county tax commissioner, the county tax assessor, and the county superior court clerk. Id.
Reviewing the Open Records Act,\textsuperscript{176} the court of appeals held that a county commissioner, the tax commissioner, and the tax assessor were limited as to the charges they could impose.\textsuperscript{177} The court delineated, however, in respect to "the ability of superior court clerks to contract to market records of their offices for profit."\textsuperscript{178} This power devolved from a statute enacted subsequent to the Open Records Act, a statute the court interpreted to prevail over that Act.\textsuperscript{179} Accordingly, the court reversed the trial judge's decision limiting the amounts the Superior Court Clerk could charge the plaintiff for reproducing the requested computerized information.\textsuperscript{180}

E. Finances

Again this year, the supreme court rather routinely rejected an "indebtedness" challenge to a local bond issue.\textsuperscript{181} Reed v. State\textsuperscript{182} featured an arrangement between the local impoundment authority and the county to fund a surface water impoundment facility via the authority's issuance of bonds. The challenge to the arrangement went to the county's agreeing "to make payments to the Authority sufficient

\begin{itemize}
\item \textsuperscript{176} O.C.G.A. §§ 50-18-70 to 50-18-76 (1994).
\item \textsuperscript{177} 219 Ga. App. at 841, 467 S.E.2d at 194. O.C.G.A. § 50-18-71(d) provides that a reasonable charge may be collected for search, retrieval, and other direct administrative costs for complying with a request . . . . The hourly charge shall not exceed the salary of the lowest paid full-time employee who, in the discretion of the custodian of the records, has the necessary skill and training to perform the request . . . .
\item \textsuperscript{178} 219 Ga. App. at 842, 467 S.E.2d at 194.
\item \textsuperscript{179} O.C.G.A. § 15-6-96: The clerk of the superior court is the custodian of the records of his or her office. Any contract to distribute, sell, or otherwise market records or computer generated data of the office of the clerk of the superior court for profit shall be made by the clerk of the superior court.
\item The court held that the two statutes "may be reconciled by giving recognition to the last stated statute." 219 Ga. App. at 841, 467 S.E.2d at 194. For discussion of the appellate use of legislative history in this and other contexts, see R. Perry Sentell, Jr., Georgia Statutory Construction: The Use of Legislative History, April 1996 GA. B.J. 30 (1996).
\item \textsuperscript{180} 219 Ga. App. at 840, 467 S.E.2d at 194. Moreover, the court reasoned, this result did not contravene the "overall purpose" of the Open Records Act: the real estate records in issue were required to be printed for public inspection no less than every 30 days; "Allowing the [county] superior court clerk to contract to earn a profit by providing a computer disk or tape containing this already public information in no way limits public access to the information." Id. at 841, 467 S.E.2d at 194.
\item \textsuperscript{182} 265 Ga. 458, 458 S.E.2d 113 (1995).
\end{itemize}
to pay the bonds." Affirming the bond validation order, the court asserted that "the county has not pledged its faith and credit to pay the bonds, but has entered into an intergovernmental contract, which it is authorized to do by the Constitution of Georgia." As long as the purpose of the contract was one authorized by the constitution, the court concluded, the arrangement "is a valid means of providing revenue to the Authority to be used to pay the bonds."

On a distinctly different financial facet, *C.W. Matthews Contracting Co. v. Collins* involved a county's power to impose a local option tax on equipment purchased in another county where the state sales tax was paid. The equipment owner relied upon a statute excluding from the local option tax a transaction not subject to the state tax. Because no state tax was due on the equipment in the county where it was later used (the tax having been paid in the county of purchase), the owner contested that county's local option tax. Reading the statutory exclusion *in pari materia* with related statutes, the court rejected the owner's position. Indeed, the court reasoned, under that position "only the county where the taxpayer purchased the subject property could ever impose a local option tax, because the state would assess the one-time state sales and use tax in that county alone."

Completing the financial cycle, *Poythress v. Wilkins* dealt with county collection of service assessments on spaces in mobile home

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183. *Id.* at 459, 458 S.E.2d at 114. Intervenor contended "that the intergovernmental contract between the Authority and [the county], in which [the county] promises to make payments to the Authority sufficient to pay the bonds, violates the local act creating the Authority" and providing that the county "shall not pledge its faith and credit for payment of the bonds." *Id.*

184. *Id.*

185. GA. CONST. art. IX, § III, para. I.

186. 265 Ga. at 459, 458 S.E.2d at 115.


189. For extensive treatment and analysis of *in pari materia* statutory interpretation in Georgia, see R. PERRY SENTELL, JR., STATUTORY CONSTRUCTION IN GEORGIA: THE DOCTRINE OF IN PARI MATERIA (1996).

190. 265 Ga. at 449, 457 S.E.2d at 172. This was mandated, the court asserted, "when that code section is read and considered together with the related statutes in the remainder of Chapter 8 of Title 48." *Id.*

191. *Id.* at 450, 457 S.E.2d at 172. "Section 48-8-90, however, clearly contemplates that more than one local taxing jurisdiction may impose a local option tax . . . ." *Id.* The court thus affirmed the court of appeals' decision against the equipment owner in 213 Ga. App. 109, 444 S.E.2d 100 (1994).

Upon demand of park owners for authority, the county tendered a resolution levying assessments on "dwelling units." Appraising the stand-off, the court of appeals held that the resolution could not authorize assessments on "spaces . . . on which mobile homes are located as well as the mobile home itself." By definition," the court asserted, "a mobile home is an item of personal property separate and apart from the real property on which it sits." That real property "can in no way be considered a residence, dwelling, or residential or dwelling unit."

F. Property

Local government property rights give rise to conflicting claims and can make for hard-fought litigation. Wilcox County School District v. Sutton presented the claim that a county school board had abandoned property (land and building) originally deeded to it by a municipality. The school board's contested action was its decision to demolish the building as a part of a new school construction plan. Did that decision trigger a provision in the 1950 deed that the property would revert to the city "if . . . abandoned for school purposes"? The supreme court reversed the trial judge's submission of the abandonment issue to a jury. Emphasizing evidence that the land continued to serve as a part of the campus of the consolidated county school complex,

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193. Id. at 475, 462 S.E.2d at 423. The annual assessments were for funding fire protection and solid waste management services in established districts of the county. Id., 462 S.E.2d at 424.
194. Id. at 476, 462 S.E.2d at 424.
195. Id. "To the contrary, the terms 'residential units' and 'dwelling units' refer to mobile homes by their plain and ordinary meaning." Id.
196. Id.
197. Id. "Consequently, the taxing authorities are not authorized to enforce the assessments at issue against plaintiffs under the resolutions as worded." Id.
199. Id. at 720, 461 S.E.2d at 868. The controversy arose via objections to a school construction plan by residents and taxpayers of the county; it was brought against the school district and county school officials. Id.
200. Id., 461 S.E.2d at 869. Preliminarily, the court held that a 1900 deed of the property to the municipality itself did not create a trust; "[i]t merely conveyed the property to the City and specified the purpose for which it was being conveyed." Id. at 721, 461 S.E.2d at 870.
201. Id. at 722, 461 S.E.2d at 870. "The trial court's holding that there is a question for jury trial was error because the evidence demands the conclusion that the property has not been 'abandoned for school purposes.'" Id.
the court held there had been no abandonment of the property "for school purposes."\textsuperscript{202}

\textbf{G. Liability}

Liability litigation against counties, their officers, agents, and employees maintained its frantic pace of the last several years.\textsuperscript{203} Supplementing last year’s major contribution on current county responsibility,\textsuperscript{204} the supreme court added its opinion in \textit{Woodard v. Laurens County}.\textsuperscript{205} There, plaintiffs alleged injury in an intersection collision caused by the county’s, and its agents’, negligent maintenance of a stop sign.\textsuperscript{206} A unanimous court held that, under the 1991 constitutional amendment,\textsuperscript{207} the county enjoyed sovereign immunity. Moreover, unless the legislature had expressly so provided, that immunity was unaffected by liability insurance.\textsuperscript{208} The court agreed that this scheme denied county tort victims equal treatment with those having claims against the state.\textsuperscript{209} However, “[a] waiver of sovereign immunity is a mere privilege, not a right, and the extension of that

\textsuperscript{202} Id. “In the context of a deed such as is being considered here, ‘school purposes’ means ‘any activity that is necessary in the proper maintenance and operation of a school under our present school system.’” Id. (quoting Board of Educ. of Appling County v. Hunter, 190 Ga. 767(2), 10 S.E.2d 749 (1940)).


\textsuperscript{206} Id. at 404, 456 S.E.2d at 581. Plaintiffs’ vehicle struck a truck broadside which had failed to obey a stop sign at the intersection. Id.

\textsuperscript{207} GA. CONST. art. I, § II, para. IX.

\textsuperscript{208} 265 Ga. at 405, 456 S.E.2d at 582. The court observed that under O.C.G.A. § 33-24-51(b), the legislature had expressly provided for governmental waiver of tort immunity to the extent of liability insurance for accidents arising from the use of motor vehicles (see R. Perry Sentell, Jr., \textit{Tort Liability Insurance in Georgia Local Government Law}, 24 MERCER L. REV. 651 (1973)), but emphasized the inapplicability of that statute here “because the liability of appellees is not predicated upon their alleged negligent use of an insured motor vehicle.” 265 Ga. at 405, 456 S.E.2d at 583.

\textsuperscript{209} 265 Ga. at 405, 456 S.E.2d at 583. Plaintiffs with tort claims against the state itself have the benefit of the broad waiver of sovereign immunity afforded by the \textit{Georgia Tort Claims Act}, O.C.G.A. §§ 50-21-20 to 50-21-37 whereas O.C.G.A. § 33-24-51(b) waives the sovereign immunity of a county only as to tort claims which arise out of the alleged negligent use of an insured motor vehicle.

265 Ga. at 405, 456 S.E.2d at 583.
privilege is solely a matter of legislative grace." The court thus affirmed summary judgments favoring the county, its commissioners, and two employees in their official capacities.

Closely tracking Woodard, the court of appeals dealt, in Long v. Hall County Board of Commissioners, with a charge of county negligence in permitting the escape of a jail inmate. Alleging injury from the escapee's negligent driving of a stolen vehicle, plaintiff also established coverage by liability insurance. The court posited the 1991 constitutional amendment as the source of the county commissioners' immunity, an immunity unaffected "by the mere purchase of insurance coverage." The court discounted the legislatively authorized insurance waiver for claims arising from the county's use of a motor vehicle. In this case, the court delineated, the commissioners' charged liability "is not predicated upon their alleged negligent use of an insured motor vehicle.

210. 265 Ga. at 406, 456 S.E.2d at 583 (citing Sikes v. Candler County, 247 Ga. 115, 117(2), 274 S.E.2d 464 (1981)). The court said that "discrimination in the grant of privileges is not a denial of equal protection to those who are not favored." Id. (citing Schlesinger v. City of Atlanta, 161 Ga. 148(2)(b), 129 S.E. 861 (1925)).

211. Id. at 407, 456 S.E.2d at 584. As to the two county employees sued in their individual capacities, the court held that under the 1991 amendment, there was immunity for discretionary functions and that the alleged inadequate maintenance of the stop sign constituted a discretionary act. Id. Thus, summary judgment was appropriate in these instances as well.

In the period case of Swan v. Johnson, 219 Ga. App. 450, 465 S.E.2d 684 (1995), involving a claim for the death of a child in a swimming pool owned by a "unified government," the court of appeals rejected plaintiff's argument that the governmental entity was neither the state nor a department or agency of the state. Rather, the court held, under the express language of the unified government's charter, the government "shall follow the law and rules of tort liability applicable to Counties in Georgia." Id. at 452, 465 S.E.2d at 686 (quoting 1990 Ga. Laws 3614). With that, the court applied the supreme court's decision in Woodard to the case and held the government immune from liability. Id., 465 S.E.2d at 687.


213. Id. at 853, 457 S.E.2d at 186. The inmate escaped from a minimum security work detail, stole a truck, and collided with plaintiffs. They sued both the county commissioners and the county correctional institute. The court viewed these defendants as covered by the same legal principles. Id.

214. Id. Defendants admitted the existence of the insurance. Id. at 854, 467 S.E.2d at 188.

215. GA. CONST. art. I, § II, para. IX.

216. 219 Ga. App. at 856, 467 S.E.2d at 189.


218. 219 Ga. App. at 857, 467 S.E.2d at 190. Thus, "the trial court correctly granted summary judgment to the . . . County Board of Commissioners and the county Correctional Institute." Id.
In an effort to avoid immunity, claimant in *Gwinnett County v. King*219 hoisted a civil rights action under section 1983.220 Plaintiff alleged illegal denial of credit for time served in, and improper termination from, the county's work release program.221 In assessing those claims, the court of appeals observed that section 1983 does not subject local governments to respondeat superior liability.222 Rather, "it must be shown that some policy of [the] County was responsible for the violation of [plaintiff's] federally protected rights."223 Plaintiff having identified no such county "policy," the court awarded summary judgment to the county.224

Reflecting the rich diversity of liability litigation, *Gwinnett County v. Yates*225 focused upon the issue of attorney fees. A superior court clerk hired private counsel to establish his freedom from coverage by the county's merit system.226 On his subsequent claim for attorney fees, the supreme court reasoned as follows:

[W]here . . . an official, acting in his official capacity, is required to hire outside counsel to assert a legal position the local government attorney cannot (because of a conflict in representing the local government) or will not assert, and the official is successful in asserting his or her position, the local government must pay the official's attorney fees.227

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221. 218 Ga. App. 800, 463 S.E.2d 511 (1995). Consequently, plaintiff urged, he had been unconstitutionally detained in the county correctional institute. He sued the county and prison officials. *Id.* at 800-01, 463 S.E.2d at 512.
222. *Id.* at 802, 463 S.E.2d at 513.
223. *Id.*
224. *Id.* As for the prison officials, the court found that plaintiff had established no right to have credit for time served, and thus defendants were entitled to qualified immunity. *Id.*
226. *Id.* at 504, 458 S.E.2d at 791. Plaintiff contended that the merit board had no jurisdiction over his dismissal of an employee, requested the county attorney assigned to him to make that argument and, upon the attorney's refusal to do so, hired private counsel to file a declaratory judgment action. The court decided that the clerk of the superior court was not subject to the county merit system. *Id.*
227. *Id.* at 508, 458 S.E.2d at 795. The court explained that "[t]his is not because of any bad faith or improper conduct on the part of . . . the county. Rather, attorney fees in this instance are simply an expense of government operation." *Id.* at 508-09, 458 S.E.2d at 795.

Dissenting, Presiding Justice Benham found that the superior court clerk was constrained by the county merit system and was thus not entitled to attorney fees. More
In several cases, the liability focus fell primarily upon county officers. On two occasions, the court of appeals applied the "ministerial-discretionary" dichotomy, turning official immunity upon the nonmalicious performance of "discretionary functions." The court worked that analysis in Bitterman v. Atkins upon a county school principal charged with negligently supervising the installation of lockers. "The principal's responsibility was within his discretionary duties, and as such, the doctrine of sovereign immunity acts to shield them in the absence of evidence that they were wilful, malicious, or corrupt." A similar approach yielded a similar result in Teston v. Collins, an action against county school officials for injuries arising out of a student's altercation with a school visitor. Again the court reasoned that "absent any allegation that the individual school officials and employees exercised their discretion with actual malice or actual intent to cause injury to [plaintiff], we hold that they were all cloaked with official immunity." 

generally, however, Justice Benham was "troubled by the majority's approval of county officials filing suits in their official capacities (other than suits filed in the regular course of business, e.g., tax forfeitures) and then turning to the county's governing authority for payment of attorney fees expended pursuing the unauthorized litigation." Id. at 513, 458 S.E.2d at 798 (Benham, P.J., dissenting).

In a remaining case of the period, turning upon provisions of a municipal-county sewer agreement and thus of limited significance, the court of appeals held the agreement to establish a joint enterprise, with each party jointly and severally liable for the acts of the other, notwithstanding their agreement between themselves as to how control over the sewer would be exercised. DeKalb County v. Lenowitz, 218 Ga. App. 884, 463 S.E.2d 539 (1995).

229. Id. at 652, 458 S.E.2d at 688. The lockers were of a free-standing design, one of which fell on the plaintiff student. Id.
230. Id. at 654-55, 458 S.E.2d at 691. "Although the principal was primarily responsible for ordering the new lockers, . . . he was not responsible for their installation." Id. at 654, 458 S.E.2d at 691. The court thus reversed the trial judge's denial of the principal's motion for summary judgment. Id. at 655, 458 S.E.2d at 691.
232. Id. at 829, 459 S.E.2d at 452. The altercation occurred between a student in a shop class and a visitor to that class. Plaintiffs sued the superintendent of the school board, the school principal, and a teacher. Id.
233. Id. at 831, 459 S.E.2d at 454. "Official immunity protects individual public agents from personal liability for discretionary actions taken within the scope of their official authority, and done without wilfulness, malice or corruption." Id. at 830, 459 S.E.2d at 454. The court termed the manner in which the teacher supervised his class as discretionary, and likewise the actions of the superintendent and principal in reporting the incident and seeking medical care for the student. As for the latter, these were "purely discretionary because they entailed examining the facts, reaching reasoned conclusions, and acting on them in a way not specifically directed." Id. at 831, 459 S.E.2d at 454.
Finally, the supreme court visited the current source of “official immunity”—the constitutional amendment of 1991—and resolved a novel issue. Under that amendment, public officers are liable “for injuries and damages if they act with actual malice or with actual intent to cause injury in the performance of their official functions.” In Merrow v. Hawkins, plaintiff argued “actual malice” to mean “reckless disregard” of life or safety, the same meaning attributed to the term in other legal contexts.

The supreme court could scarcely have been more deliberate: “We granted an interlocutory appeal in this case of first impression to construe the meaning of the term ‘actual malice’ as it is used in the context of official immunity.” Acknowledging but discarding the “reckless disregard” connotation derived from defamation law, the court took solace in criminal law’s distinction between “actual” and “implied” malice. There, it was the latter—“implied malice”—that bore the construction of “reckless disregard.” Because the 1991 amendment specified the term “actual malice,” the court reasoned that it

In a similar vein, see the period case of Wright v. Ashe, 220 Ga. App. 91, 469 S.E.2d 268 (1996), a mother’s action against county school district officials for her child’s death in an automobile accident while truant. Reasoning that “the general task imposed on teachers to monitor, supervise, and control students has . . . been held to be a discretionary action,” the court concluded that “the defendants’ acts in this case were discretionary in nature, not ministerial. Thus, they are entitled to the protection afforded by the doctrine of official immunity.” 220 Ga. App. at 94, 469 S.E.2d at 271.

GA. CONST. art. I, § II, para. IX.


GA. CONST. art. I, § II, para. IX. "Express or actual malice, although not a term typically used in the context of civil litigation, . . . is found in criminal law and has long been distinguished from 'implied malice,' a term which has been defined to mean conduct exhibiting a 'reckless disregard for human life.'" Id.
"requires a deliberate intention to do wrong."\textsuperscript{241} After Merrow, therefore, only a showing of "deliberate intention," will pierce the county officer's "official immunity" for his "official functions."\textsuperscript{242}

\textbf{H. Zoning}

County zoning is typically implemented by a county zoning ordinance. In a county's effort to enforce its zoning, the fact of the zoning ordinance's existence is essential to the proceeding. This was the lesson of Childers v. Richmond County,\textsuperscript{243} a county's action to enjoin defendant's mobile home moving business on property zoned for agricultural purposes.\textsuperscript{244} In reversing the trial judge's award of injunctive relief, the supreme court scored the county's failure to introduce its zoning ordinance into evidence.\textsuperscript{245} On grounds that "judicial notice cannot be taken . . . of . . . county ordinances,"\textsuperscript{246} the court excused defendant from an order "to comply with the terms of an ordinance not properly before the court."\textsuperscript{247}

As for the zoning ordinance itself, Jackson v. Spalding County\textsuperscript{248} focused upon a provision specifying certiorari as the method of appealing the zoning board's denial of a variance.\textsuperscript{249} The supreme court rejected

\begin{itemize}
\item \textsuperscript{241} Id. at 391, 467 S.E.2d at 337.
\item \textsuperscript{242} "The parties agree that [defendant] was exercising a discretionary power when he gave the car keys to [the inmate]. Thus, [defendant] is entitled to official immunity unless he acted with 'actual malice,' as that term is used in the 1991 amendment . . . ." \textit{Id.} The court concluded that "[t]he record is devoid of any evidence demonstrating that [defendant] acted with actual malice. It follows that the trial court erred in failing to grant his motion for summary judgment." \textit{Id.} at 392-93, 467 S.E.2d at 338.
\item \textsuperscript{243} 266 Ga. 276, 467 S.E.2d 176 (1996).
\item \textsuperscript{244} Id. at 276, 467 S.E.2d at 176. The county also charged defendant with illegally maintaining more than one mobile home on the property. \textit{Id.}
\item \textsuperscript{245} Id. at 277, 467 S.E.2d at 177. "Upon our review of the record in this case, it is apparent that the . . . County comprehensive zoning ordinance which the county sought to enforce and which the trial court purported to apply, was not introduced into evidence." \textit{Id.}
\item \textsuperscript{246} Id. (quoting Leger v. Ken Edwards Enterprises, 223 Ga. 536, 539(2), 156 S.E.2d 651 (1967)).
\item \textsuperscript{247} Id. The county fared no better in the period case of Hixon v. Walker County, 266 Ga. 641, 468 S.E.2d 744 (1996), as it sought to justify denial of a building permit by relying only upon the "purpose" statement of its land regulations. On grounds that "those 'Purpose' sections set forth only a statement of general goals and purposes, without providing any criteria to govern the consideration of an application for a building permit," the supreme court reversed the trial judge's refusal to issue a mandamus to the applicants. 266 Ga. at 642, 468 S.E.2d at 744-45.
\item \textsuperscript{248} 265 Ga. 792, 462 S.E.2d 361 (1995).
\item \textsuperscript{249} Id. at 792, 462 S.E.2d at 361. Plaintiffs unsuccessfully sought a variance from the zoning ordinance's requirement in respect to roof pitches on manufactured homes and then
the property owners' argument that "certiorari is improper because the zoning board does not exercise judicial powers." Overruling one of its own decisions, the court held "that a county ordinance may specify certiorari as the method for judicial review because a [zoning] board exercises judicial powers when it rules on a variance application." More specifically, the court elaborated, "the board of appeals functioned as an administrative body making a quasi-judicial decision when it acted on the variance application." In any event, the court sustained the zoning ordinance's choice of certiorari over mandamus as the appropriate procedural vehicle of review.

A valid appeal from a county zoning decision may turn not only upon method, but upon the interest of the appellant as well. This was the issue of Macon-Bibb County Planning & Zoning Commission v. Vineville Neighborhood Ass'n, a neighborhood association's challenge to a county rezoning decision. Reviewing the two-step substantial

challenged the ordinance's certiorari prescription as an unconstitutional method of appeal. Id.

250. Id. at 793, 462 S.E.2d at 363. The court did not dispute the property owners' argument that certiorari required judicial powers: "O.C.G.A. § 5-4-1 provides that the writ of certiorari is available to correct errors committed 'by any inferior judicatory or any person exercising judicial powers.'" 265 Ga. at 793, 462 S.E.2d at 363.


252. 265 Ga. at 793, 462 S.E.2d at 363.

253. Id. at 794, 462 S.E.2d at 363-64. The court reasoned that a board of zoning appeals considers whether the facts applying to a specific piece of property warrant relief from zoning under the standards set in the county ordinance. This decision-making process is akin to a judicial act: the board determines the facts and applies the ordinance's legal standards to them. Id. at 793-94, 462 S.E.2d at 363. Additionally, the court held that in this case "the board conducted fair hearings that afforded the property owners due process." Id. at 795, 462 S.E.2d at 364.

254. Id., 462 S.E.2d at 364-65. Justice Carley, joined by Justice Thompson, dissented forcefully, asserting that "[i]t is clear that, in denying an application for a zoning variance, the Board of Appeals exercises administrative, rather than judicial or quasi-judicial powers." Id. at 796, 462 S.E.2d at 365. (Carley, J., dissenting) Accordingly, the dissent maintained, this ordinance violated the "constitutional mandate of separation of powers." Id.


256. Id. at 668, 462 S.E.2d at 764. The zoning commission had approved a request to rezone property owned by a cotton mill so as to allow the construction of a shopping mall. Id.
interest-special damage requirement for standing in rezoning cases,\textsuperscript{257} the court of appeals held the association to fall short. "No expert real estate appraiser, traffic engineer, land planner, or other expert witness testified at the zoning hearing that any member of the Association, whether adjoining landowner or otherwise, would suffer any substantial damage to any substantial interest."\textsuperscript{258} Accordingly, the court reversed the trial judge’s finding of standing on the part of the neighborhood association.\textsuperscript{269}

III. LEGISLATION

Space limitations preclude more than mere mention of major local government measures enacted by the 1996 General Assembly.

Addressing the state-local government relationship, a newly enacted statute focuses upon local legislation affecting any county or municipality.\textsuperscript{260} The measure requires that a copy of the legislation be provided to the local governing authority at the time the advertisement is submitted to the local newspaper and an attesting affidavit of fulfillment by the local legislation’s author.\textsuperscript{261}

In a striking modification of annexation by local statute, the legislature moved to condition the annexation upon a referendum in the area to be annexed.\textsuperscript{262} This referendum requirement applies if the annexed area is more than fifty percent residential and possesses a population in excess of three percent of the annexing municipality’s population.\textsuperscript{263}

Another enactment applies to annexations generally. It provides for initiating municipal rezoning procedures on property proposed to be annexed once the county is notified of the proposal.\textsuperscript{264} The rezoning

\begin{itemize}
\item \textsuperscript{257} Id. at 669, 462 S.E.2d at 765. "In order to challenge on the merits a decision of a governing authority to rezone, plaintiffs must show special damages under the substantial interest-aggrieved citizen test." Id. (quoting City of Marietta v. Traton Corp., 253 Ga. 64, 65, 316 S.E.2d 461, 463 (1984)).
\item \textsuperscript{258} Id. at 670, 462 S.E.2d at 766. The court reasoned that "neither the homeowners' opinions that their property values would decrease nor their claims of nuisance met the ... test for standing." Id. As for fears of traffic congestion, the court said that "such an inconvenience is a condition incident to urban living. It is merely the result of normal, urban growth and development." Id. at 671, 462 S.E.2d at 766 (quoting Lindsey Creek Area Civic Ass’n v. Consolidated Gov’t of Columbus, 249 Ga. 488, 491-92, 292 S.E.2d 61 (1982)).
\item \textsuperscript{259} Id. at 671, 462 S.E.2d at 767. "The trial court's decision reversing the Zoning Commission is reversed." Id.
\item \textsuperscript{261} Id.
\item \textsuperscript{263} Or, if the annexed area includes 500 persons. Id.
\end{itemize}
public hearing must be conducted prior to the annexation, and the property’s zoning classification becomes effective on the date of the zoning approval or the effective date of the annexation.\footnote{265}

As for zoning proper, the legislature imposed an additional requirement upon municipal and county zoning procedures. Those procedures must afford each side in a zoning controversy a minimum ten-minute presentation period at zoning hearings.\footnote{266} During these presentations, proponents and opponents of the proposed zoning decision may present data, evidence, and opinions favoring their views.\footnote{267}

Reflecting public frustration over lease-purchase contracts in local government financing, the 1996 legislature moved to limit them.\footnote{268} First, the dollar amounts of lease-purchase contracts are now included within the ten percent constitutional limitation on county and municipal debt.\footnote{269} Second, there can be no lease-purchase financing on items rejected in local referendums within the past four years.\footnote{270} Finally, for lease-purchase acquisition of real property, there must be a public hearing, and annual average payments on the contracts may not exceed 7.5% of the local government’s prior-year revenues.\footnote{271}

Additional concerns over local government financing materialized in a fiscal impact requirement.\footnote{272} The measure provides that no statute having a fiscal impact on municipalities or counties is to take effect before the first day of January of the year following enactment.\footnote{273}

Among recently enacted power enhancements for municipalities and counties, there is the authorization to issue permits for charitable organizations conducting solicitations on the local government’s public ways.\footnote{274} Additionally, there is the authorization for local governments to enact ordinances prohibiting public indecency, even ordinances that are more restrictive than state statutes.\footnote{275} Finally, local governments are empowered to accept credit cards as payment for taxes, fees, penalties, and the like.\footnote{276}

\footnote{265. The statute includes requirements for notice and hearing. \textit{Id.}}
\footnote{267. \textit{Id.}}
\footnote{269. Thus, contracts are prohibited when total debt plus the amount of lease-purchase contracts exceed 10% of the local government’s tax digest. \textit{Id.}}
\footnote{270. Unless the item is required by federal or state court order. \textit{Id.}}
\footnote{271. \textit{Id.}}
\footnote{273. \textit{Id.}}
The 1996 legislature manifested considerable interest in the local government's recoupment of mandated expenditures. Included was a measure empowering municipalities and counties to collect copying and other administrative costs in supplying requested public records.\(^{277}\) Having first provided a cost estimate to the person requesting the records, the local government may employ any collection methods used for collecting taxes or other assessments.\(^{278}\) Of similar sentiment, another measure focused upon expenditures made necessary in providing medical care to jail inmates.\(^{279}\) This measure empowers the local government to file civil reimbursement actions against inmates and declares that the inmate's assets and property are subject to levy and execution.\(^{280}\)

In further consideration of prison issues, the legislature authorized keepers of jails to refuse to accept arrestees who have not received medical treatment for obvious physical injuries of an emergency nature.\(^{281}\) The arresting officer must take the arrestee to a health facility or care provider to obtain a medical release.\(^{282}\)

In the local government law enforcement arena, the legislature exhibited concern over the abuse of radar and laser speed detection devices.\(^{283}\) The statute requires the Department of Public Safety to revoke a jurisdiction's permit to use such devices if any officer's individual certification has been withdrawn.\(^{284}\)

Finally, the legislature provided an alternative method for obtaining inspections of installation of water and sewer lines on private residential property.\(^{285}\) Unless the municipality or county opts out and continues to require its own inspection, a master plumber or utility contractor may perform the inspection when the installation is outside the building and underground.\(^{286}\)


\(^{278}\) Id.

\(^{279}\) Ga. H.R. Bill 1154, Reg. Sess. (1996), codified at O.C.G.A. § 42-4-50. This measure applies when the inmate has no medical insurance.

\(^{280}\) Id. Inmates who do not cooperate may not receive good-time allowance in reducing time to be served. Id.


\(^{282}\) Id. If there is no health care facility in the county, then the keeper of the jail must assume custody of the arrestee. Id.


\(^{284}\) Id. The jurisdiction must employ full-time or part-time certified police officers.


\(^{286}\) Id. Should the municipality or county opt out, it must do so by ordinance or resolution.
IV. CONCLUSION

Perhaps the concern was unwarranted: The nature of the beast insures that local government simply requires judicial and legislative solace. Perhaps the hope was unrealistic: What serves to "get it right" today may well fail the societal demands of tomorrow. Those shifting demands will, in all likelihood, keep local government suffused in the spotlight of public, and legal, attention.